

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

LARRY GAPEN,

Petitioner, : Case No. 3:08-cv-280

- vs -

District Judge Walter Herbert Rice
Magistrate Judge Michael R. Merz

DAVID BOBBY, Warden,

Respondent. :

SCHEDULING ORDER

This case is before the Court on Petitioner's Motion to Expand the Scope of Discovery (Doc. No. 105) and Motion for Leave to File an Amended Petition (Doc. No. 106). It is hereby ORDERED that the Warden file his response to those Motions, if any, not later than January 16, 2012. Petitioner's reply to any such response shall be filed not later than forty-eight hours after the response. The Magistrate Judge believes it is important to decide those Motions before convening the depositions of the jurors which Judge Rice has permitted. Therefore, no extensions of the times set in this paragraph will be granted unless accompanied by an agreed extension of the January 31, 2012, deadline for taking those depositions.

The Court has previously ordered that "Petitioner will be responsible for issuance and service of subpoenas for the jurors and alternate jurors." (Order, Doc. No. 103, PageID 1782-1783.) To ensure the Court's ability promptly to resolve any disputes about the subpoenas, it is hereby ORDERED that the person or persons making service of subpoenas on the jurors and alternates file returns of service with the Clerk immediately after making service.

When counsel advised the Court of the dates for deposition, they were set for Courtroom No. 1 upon finding that courtroom was available according to the courtroom scheduling calendar and that Courtroom No. 4 was scheduled for use by Judge Black for part of the time needed for the depositions. On January 6, 2012, Judge Rice set a jury trial to commence in Courtroom No. 1 at 9:00 A.M. on January 23, 2012 in *United States v. Atlas Lederer Co.*, Case No. 3:91-cv-309. The parties in that case estimate the length of trial at four days (Joint Proposed Final Pretrial Order, Doc. No. 877). Accordingly, the depositions will be conducted in Courtroom No. 5 on the morning of January 26 and continued in Courtroom No. 4 until completed.

January 10, 2012.

s/ **Michael R. Merz**
United States Magistrate Judge